Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 152

ROBERT WAYNE PATTERSON,
Petitioner,

versus

HUMBLE OIL & REFINING COMPANY,
Respondent.

Petition for Rehearing on or Reconsideration of Petition For Certiorari

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TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Robert Wayne Patterson, respectfully petitions herewith for a rehearing on or a reconsideration of his petition for certiorari for the following reasons:

Subsequent to the filing of the original petition, the United States Court of Appeals for the Fifth Circuit has confirmed that its opinion herein constitues an abridgment of the traditional seaworthiness warranty that Your Honors have held protects shoreside employees doing traditional seamen's work aboard vessels in navigation.

In Watz v. Zapata Off-Shore Co.,[1] the Court of Appeals states:

> "This Circuit appears to have developed another doctrine with regard to repair contracts that would also exempt [the vessel owner]. Patterson v. Humble Oil & Refining Co., 5 Cir. 1970, 423 F.2d 883."[2] (Emphasis added.)

This "doctrine," may it please Your Honors, misapplies the principles enunciated in *Mitchell v. Trawler Racer, Inc.*,[3] in *Alaska Steamship Co. v. Petterson*,[4] in *Crumady v. The J. H. Fisser*[5] and in *Mascuilli v. United States*[6] as recently interpreted in *Usner v. Luckenbach Overseas Corp.*[7] The "doctrine" developed by the Fifth Circuit is in diametric conflict with *Pope & Talbot v. Hawn*[8] and *Schell v. Chesapeake & O. R. Co.*[9]

It is now crystal clear that the Court of Appeals for the Fifth Circuit intends to, and does, distinguish between a vessel's obligations to shoreside personnel who do traditional seamen's repair work and those who are longshoremen. The latter are protected by the seaworthiness warranty, even though they themselves breach it, while the former, such as petitioner, are not so protected.

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[1] 431 F. 2d 100 (CCA 5, 1970).
[2] 431 F. 2d at p. 108, note 8.
[3] 362 U.S. 539, 80 S.Ct. 926, 4 L.Ed. 2d 941 (1960).
[4] 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 799 (1954).
[5] 358 U.S. 423, 79 S.Ct. 445, 3 L.Ed 2d 413 (1959).
[6] 387 U.S. 237, 87 S.Ct. 1705, 18 L.Ed. 2d 743 (1967).
[7] ____ U.S. ____, 27 L.Ed. 2d 562, 91 S.Ct. ____ (1971).
[8] 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1954).
[9] 325 F.2d 878 (CCA 4, 1963).

This innovative distinction is clearly contrary to Mr. Justice Black's decision in *Pope & Talbot v. Hawn*[10] wherein the Court was asked, but refused, to make a distinction between longshoremen and repairmen, saying:

> "We are asked, however, to distinguish this case from our holding [in Seas Shipping Co. v. Sieracki, 328 U. S. 85]. It is pointed out that Sieracki was a 'stevedore.' Hawn was not. And Hawn was not loading the vessel. On these grounds we are asked to deny Hawn the protection we held the law gave Sieracki. These slight differences in fact cannot fairly justify the distinction urged as between the two cases. * * * [Hawn's] need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seamen who had been or were about to go on a voyage. All were subjected to the same danger. *All were entitled to like treatment under law.*"[11] (Emphasis added)

Petitioner suggests that his need for protection from the unsecured bearing cap that fell on him, a danger brought into play by his co-employees' removal of the chain fall, was no less than the need for protection of Messrs. Crumady[12] and Mascuilli[13] from the danger-

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[10]Supra, note 8.
[11]346 U.S. 412-413.
[12]Of Crumady v. The J.H. Fisser, supra, note 5.
[13]Of Mascuilli v. U.S., supra, note 6.

ous conditions that were brought into play by their fellow longshoremen. Yet, if the instant decision and its "doctrine" are allowed to prevail, petitioner will not have received "like treatment under law."

For the reasons above mentioned and heretofore set forth, petitioner seeks rehearing on or reconsideration of his application for a writ of certiorari, to the end that said application will be granted and the decision of the Court of Appeals for the Fifth Circuit will be reviewed and reversed, with petitioner's case being remanded to that Court for consideration of other legal issues presented by petitioner's appeal.

Respectfully submitted,

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Attorney for Petitioner

Of Counsel:
KIERR and GAINSBURGH
New Orleans, Louisiana

CERTIFICATE OF SERVICE

I, the undersigned member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of this Petition for Rehearing on or Reconsideration of Petition for Certiorari has been served upon James L. Schupp, Jr., Esq., Attorney for Respondents, 2141 International Trade Mart Building, New Orleans, Louisiana 70130, G. T. Owen, Jr., Esq., Attorney for Yaun Welding & Machine Wks., 7th Floor, Reymond Building, Baton Rouge, Louisiana 70802, and John S. White, Jr., Esq., Attorney for Maryland Casualty Co., 366 St. Charles Street, Baton Rouge, Louisiana 70802, by depositing the same in the United States Mail, postage prepaid, at New Orleans, Louisiana, this ____ day of March, 1971.

Samuel C. Gainsburgh